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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION DEC 1 / 1993
Washington, D.C. 20554

IN THE MATTER OF:

MM DOCKET NO. 93-75

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY
Miami, Florida

DATE OF HEARING: November 29, 1993
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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap 410) 974-0947

DEC 17 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Miami, Florida

The above-entitled matter came on for hearing pursuant to Notice before Judge Joseph Chachkin, Administrative Law Judge, 2000 L Street, Washington, DC, 20554, on Monday, November 29, 1993, at 10:00 a.m.

APPEARANCES:

On behalf of Trinity Broadcasting of Florida, Inc.:

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On behalf of S.A.L.A.D.:

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1 APPEARANCES (Continued):

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I N D E X			
	<u>JOINT EXHIBITS</u>	<u>Identified</u>	<u>Received</u> <u>Rejected</u>
	Exhibit No. 1	185	185
	<u>TRINITY BROADCASTING</u>		
	Exhibit No. 1	188	196
	Exhibit No. 2	188	225
	Exhibit No. 3	188	240
	Exhibit No. 4	188	261
	Exhibit No. 5	188	263
	Exhibit No. 6	188	271
	Exhibit No. 7	188	276
	Exhibit No. 8	188	278
	Exhibit No. 9	188	279
	Exhibit No.10	188	281
	Exhibit No.11	188	282
	Exhibit No.12	188	287
	Exhibit No.13	188	292
	Exhibit No.14	188	301
	Exhibit No.15	188	303
	Exhibit No.16	188	306
	Exhibit No.17	188	311
	Exhibit No.18	188	313
	Exhibit No.19	188	317
	Exhibit No.20	188	318
	Exhibit No.21	188	320
	Exhibit No.22	188	322
	Exhibit No.23	188	327
	Exhibit No.24	188	328
	Exhibit No.25	188	329
	Exhibit No.26	188	334
	Exhibit No.27	188	335
	Exhibit No.28	188	336
	Exhibit No.29	188	337
	Exhibit No.30	188	338
	Exhibit No.31 (Tabs A-G)	341	
	Exhibit No.32 (Tabs A-H)	342	
	Hearing began: 10:00 a.m.	Hearing Ended: 4:00 p.m.	
	Lunch Break Began: 12:30 p.m.	Lunch Break Ended: 1:30 p.m.	

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P R O C E E D I N G S

1 JUDGE CHACHKIN: -- on behalf of the parties. On
2 behalf of Trinity Broadcasting of Florida, Inc., Trinity
3 Broadcasting Network, and National Minority TV, Inc.?

4 MR. TOPEL: Howard Topel, Nathaniel Emmons,
5 Eugene F. Mullins, and Christopher Holt.

6 JUDGE CHACHKIN: On behalf of Glendale Broadcasting
7 Company?

8 MR. COHEN: Lewis Cohen and John Schauble.

9 JUDGE CHACHKIN: On behalf of the Chief of Mass
10 Media Bureau?

11 MR. SHOOK: Gary Schonman and James Shook.

12 JUDGE CHACHKIN: On behalf of Spanish American
13 League Against Discrimination?

14 MR HONIG: David Honig, and I'd like to note, ini-
15 tially, the additional appearance of David McCurdy, a member
16 of the Bar of the State of New York, who is this gentleman
17 here.

18 JUDGE CHACHKIN: Today is the first day of the
19 hearing. The first order of business is taking up the exhib-
20 its. The parties will identify the exhibits which they wish
21 to introduce, and the exhibits will be marked for identifica-
22 tion and then offered into evidence. We will first start with
23 Trinity, then we will have Glendale, Spanish American League
24 Against Discrimination, and then the Bureau. Insofar -- first

1 of all, let me just lay out the groundwork, ground rules, as
2 far as time -- the, the hours of this proceeding. We'll begin
3 the proceeding at 9:30 and end at 4, and I expect we would
4 take two 10-minute recesses, one in the morning and one in the
5 afternoon. In addition to that, we will recess at approxi-
6 mately 12:30. If we're in a situation where a witness has
7 completed his testimony at 12, probably recess then instead of
8 12:30. We will recess for 1 hour for lunch. As I say, we
9 will start at 9:30. If I feel that we're moving too slowly,
10 then I will move up the time to 9 a.m., but initially we'll
11 start at 9:30 and see how that goes. Are there any prelimi-
12 nary matters before we begin?

13 MR. COHEN: Your Honor, I just had one matter. I
14 have handed to my colleagues, and I hand to you, a, an index
15 of exhibits that Glendale and the Bureau -- where Glendale's
16 exhibits and the Bureau's exhibits were listed on, on the same
17 document for ease of dealing with those exhibits.

18 JUDGE CHACHKIN: Thank you.

19 MR. TOPEL: Yes, Your Honor, I have a preliminary
20 matter as well.

21 JUDGE CHACHKIN: Yes? Go ahead.

22 MR. TOPEL: Following the pre-hearing conference
23 that we held last week, the parties have reached some
24 agreements concerning witnesses, and I thought I should report
25 that to you at the outset so that you'd know where we're

1 heading when we get to those exhibits. Basically, concerning
2 the Trinity issues, the parties have agreed that the request
3 for Pastor Aguillar to be cross-examined will be withdrawn,
4 and Trinity will agree to the receipt into evidence of a
5 Glendale exhibit of the deposition testimony of Ben Miller,
6 and we would also agree to the authentication of documents
7 that Ben Miller could have authenticated if he were here. On
8 the Glendale issues, the parties have agreed that
9 Messrs. March, Rick, and Edsall, would not need to appear to
10 be cross-examined, so that should shorten the, the hearing
11 sessions.

12 JUDGE CHACHKIN: Do you have an order of witnesses
13 that you intend to call? That you can --

14 MR. TOPEL: We, we would continue to proceed in the
15 order --

16 JUDGE CHACHKIN: You've listed your order of wit-
17 nesses as your exhibits? Is that --

18 MR. TOPEL: In the same order as the exhibits were
19 exchanged.

20 JUDGE CHACHKIN: All right.

21 MR. TOPEL: And we would, we would still offer
22 Pastor Aguillar's testimony. He just won't be called for
23 cross-examination.

24 JUDGE CHACHKIN: All right, let's see what the
25 objections, if any, are to any portions of the exhibits.

1 MR. SHOOK: Your Honor, the Bureau also has a pre-
2 liminary matter.

3 JUDGE CHACHKIN: Yes?

4 MR. SHOOK: There is an index to one of our volumes
5 where I've made a correction. I've distributed the corrected
6 copies to the other parties and the corrected versions -- the
7 corrected version is included in our exhibits, which we will
8 give to the court reporter today, and what I have is for you.

9 JUDGE CHACHKIN: All right, thank you. What does
10 this mean when you have Number 1 next to it?

11 MR. SHOOK: Your Honor, that --

12 JUDGE CHACHKIN: Or 2, whatever.

13 MR. SHOOK: They are the page numbers on the --

14 JUDGE CHACHKIN: Where the exhibit --

15 MR. SHOOK: -- right-hand side, and then the exhibit
16 numbers are on the left-hand side.

17 JUDGE CHACHKIN: Are you telling me the corrected
18 exhibits are included now with the material or, or just --

19 MR. SHOOK: No, the exhibit was correct in the first
20 place. The only thing that I corrected was the index page --

21 JUDGE CHACHKIN: I see.

22 MR. SHOOK: -- with respect to -- and I can point it
23 out to Your Honor so that there is no question here -- with
24 respect to Exhibit No. 237, we had typed in "Minutes of 1988
25 Annual Meeting" and it was --

1 JUDGE CHACHKIN: I see.

2 MR. SHOOK: -- really the 1989 annual meeting.

3 JUDGE CHACHKIN: All right. All right, Trinity can
4 proceed now.

5 MR. TOPEL: Yes, Your, Your Honor, in view -- we
6 chose to proceed in the order in which the exhibits are num-
7 bered starting with 1, or would you wish us to proceed by
8 issue and deal with --

9 JUDGE CHACHKIN: No, definitely chronological order.

10 MR. TOPEL: Numerical order.

11 JUDGE CHACHKIN: Numerical order, and I would sug-
12 gest that the way you do it is have marked for -- identify by
13 book at a time all the exhibits in that book, and then I will
14 mark them for identification, and then we'll proceed to rul-
15 ings on objections.

16 MR. TOPEL: Thank you. Your Honor, Mr. Emmons will
17 handle the --

18 JUDGE CHACHKIN: All right.

19 MR. TOPEL: -- additional 36 exhibits.

20 MR. EMMONS: Your Honor, the first exhibit is actu-
21 ally a TBF/Glendale Joint Exhibit 1 previously exchanged, and
22 it is a, a 5-page exhibit -- hold on a second.

23 (Asides.)

24 JUDGE CHACHKIN: I have it. All right, let's pro-
25 ceed.

1 MR. EMMONS: Your Honor, I guess that TBF and
2 Glendale will jointly offer that exhibit into evidence this
3 morning.

4 JUDGE CHACHKIN: All right, the 5-page TBF/Glendale
5 joint exhibit is marked for identification as Joint Exhibit 1.
6 (Whereupon, the document referred to
7 as TBF/Glendale Joint Exhibit No. 1
8 was marked for identification.)

9 MR. EMMONS: And we offer it into evidence,
10 Your Honor.

11 JUDGE CHACHKIN: Any objections?

12 MR. SHOOK: Your Honor, the Bureau would appreciate
13 a description. We cannot seem to locate what is being
14 referred to here.

15 JUDGE CHACHKIN: Well, what it consists of, appar-
16 ently, lists the information concerning the cable interests of
17 George F. Gardener, as well as low-power interests.

18 MR. SHOOK: Your Honor, we have no objection.

19 JUDGE CHACHKIN: And lists details about each of the
20 cable systems. All right, hearing no objection, TBF/Glendale
21 Joint Exhibit 1 is received.

22 (Whereupon, the document marked as
23 TBF/Glendale Joint Exhibit No. 1 was
24 received into evidence.)

25 MR. EMMONS: Your Honor, next TBF would ask that

1 | there be identified what is found in Volume 1A of the TBF
2 | hearing exhibits consisting of TBF reportings 1 through 30.
3 | These are the sworn declarations of, of public witnesses and
4 | constitute their testimony being offered by TBF in this case.
5 | Would you want me, Your Honor, to identify each one by name?

6 | JUDGE CHACHKIN: By name and the number of pages.

7 | MR. EMMONS: Very well. TBF Exhibit 1 is the decla-
8 | ration of Dr. Walter C. Anders, consisting of 3 pages plus a
9 | signature page.

10 | JUDGE CHACHKIN: Oh, just keep on with the whole
11 | book.

12 | MR. EMMONS: Oh, very well. Thank you, Your Honor.
13 | TBF Exhibit 2 is the declaration of Timothy L. Ball, consist-
14 | ing of 3 pages plus a signature page. TBF Exhibit 3 is the
15 | declaration of Dr. Robert G. Barnes, B-A-R-N-E-S, consisting
16 | of 4 pages plus a signature page. TBF Exhibit 4 is the decla-
17 | ration of Robert C. Bashaw, B-A-S-H-A-W, consisting of 5
18 | pages -- excuse me, 4 pages plus a signature page. TBF
19 | Exhibit 5 is the declaration of Cleveland Dell, III, consist-
20 | ing of 3 pages plus a signature page. TBF Exhibit 6 is the
21 | declaration of Pastor George M. Beneby, B-E-N-E-B-Y, consist-
22 | ing of 3 pages plus a signature page. TBF Exhibit 7 is the
23 | declaration of Gregory C. Brown, consisting of 5 pages plus a
24 | signature page. TBF Exhibit 8 is the declaration of Frank G.
25 | Burt, B-U-R-T, consisting of 4 pages which includes the signa-

1 ture page. TBF Exhibit 9 is the declaration of
2 Jean Caceres-Gonzalez. The first half of the last name is
3 spelled C-A-C-E-R-E-S, and the exhibit consists of 4 pages
4 plus signature page. TBF Exhibit 10 is the declaration of
5 Ruther, R-U-T-H-E-R, M. Carter, consisting of 5 pages plus the
6 signature page. TBF Exhibit 11 is the declaration of
7 Stephen Dale Cronk, C-R-O-N-K, consisting of 2 pages plus
8 signature page. TBF Exhibit 12 is the declaration of
9 Richard W. Dodge, consisting of 4 pages plus signature page.
10 TBF Exhibit 13 is the declaration of Earnest, that's
11 E-A-R-N-E-S-T, Raymond Hughes, consisting of 4 pages plus
12 signature page. TBF Exhibit 14 is the declaration of
13 Dr. Franklin M. Jacobs, consisting of 7 pages plus signature
14 page. TBF Exhibit 15 is the declaration of Michael
15 Lewandowski, spelled L-E-W-A-N-D-O-W-S-K-I, consisting of 5
16 pages plus signature page. TBF Exhibit 16 is the declaration
17 of Luis, L-U-I-S, Lopez, consisting of 4 pages plus signature
18 page. TBF Exhibit 17 is the declaration of Gary G. Morton,
19 consisting of 3 pages plus signature page. TBF Exhibit 18 is
20 the declaration of Miguel A. Ramirez, consisting of 6 pages
21 plus signature page. TBF Exhibit 19 is the declaration of
22 Gilbert S. Rodriguez, consisting of 5 pages plus signature
23 page. TBF Exhibit 20 is the declaration of John Roper,
24 R-O-P-E-R, consisting of 2 pages signature page. TBF
25 Exhibit 21 is the declaration of Roberto Rosario, consisting

1 of 5 pages plus signature page. TBF Exhibit 22 is the
2 declaration of Susan Sissman, S-I-S-S-M-A-N, consisting of 3
3 pages plus signature page. TBF Exhibit 23 is the declaration
4 of Jack Thompson, consisting of 4 pages plus signature page.
5 TBF Exhibit 24 is the declaration of Lonnie Lee Tolbert,
6 T-O-L-B-E-R-T, consisting of 4 pages plus signature page. TBF
7 Exhibit 25 is the declaration of David Vega, consisting of 6
8 pages plus signature page. TBF Exhibit 26 is the declaration
9 of Barbara L. Wade, consisting of 5 pages plus signature page.
10 TBF Exhibit 27 is the declaration of Mary G. Washington,
11 consisting of 2 pages plus signature page. TBF Exhibit 28 is
12 the declaration of Isaiah S. Williams, Junior, consisting of 4
13 pages plus signature page. TBF Exhibit 29 is the declaration
14 of Elizabeth Anne, A-N-N-E, Wilson, consisting of 4 pages plus
15 signature page; and TBF Exhibit 30 is the declaration of
16 James Edward Woods, W-O-O-D-S, consisting of 3 pages plus
17 signature page.

18 JUDGE CHACHKIN: The documents described will be
19 marked for identification as TBF Exhibits 1 through 30.

20 (Whereupon, the document referred to
21 as TBF Exhibits 1 through 30 were
22 marked for identification.)

23 MR. EMMONS: Your Honor, I can offer them all at
24 this point or I can offer them individually.

25 JUDGE CHACHKIN: Well, let's find out if there are

1 going to be any objections to the exhibits.

2 MR. SCHAUBLE: Yes, Your Honor, there are going to
3 be objections --

4 JUDGE CHACHKIN: Well, let me take --

5 MR. SCHAUBLE: -- coming to some of the exhibits.

6 JUDGE CHACHKIN: Then we'll take it one at a time,
7 then.

8 MR. EMMONS: All right. Your Honor, at this point,
9 TBF will offer into evidence TBF Exhibit 1.

10 JUDGE CHACHKIN: Any objections?

11 MR. EMMONS: That's the declaration of Dr. Walter C.
12 Anders.

13 JUDGE CHACHKIN: Any objections?

14 MR. SCHAUBLE: Your Honor, I do have -- I have one
15 objection on paragraph 2 of the exhibit. The time frame, time
16 frame referred to in the exhibit is February 1, 1987, to
17 February 1, 1992. My understanding is that the relevant time
18 frame for renewal expectancy begins on February 1, 1987, but
19 ended on December 27th, 1991, when Glendale filed its compet-
20 ing application.

21 JUDGE CHACHKIN: Go ahead.

22 MR. EMMONS: Your Honor, Your Honor, I don't believe
23 that's correct. I think the relevant period for renewal
24 expectancy is the full licensed term. The Commission, I
25 think, they have indicated in the past that programming

1 efforts after a competing application was filed might be given
2 different weight from programming efforts before the filing of
3 competing application but has never, to my knowledge, held
4 that the period of time between the filing of the competing
5 application and the end of the term is irrelevant.

6 JUDGE CHACHKIN: What's the position of the Bureau
7 on this?

8 (Asides.)

9 MR. SCHONMAN: Your Honor, without, without doing
10 appropriate research at the moment, we're not able to offer
11 any help in this matter --

12 MR. SCHAUBLE: Your Honor --

13 MR. SCHONMAN: -- at this, at this time.

14 MR. SCHAUBLE: Your Honor, in the Longmont, Colorado
15 comparative renewal case before Judge Steinberg, I believe
16 Judge Steinberg ruled, consistent with our position, that
17 efforts that took place after the filing of competing applica-
18 tion was stricken as irrelevant, even if they did fall within
19 the licensee's licensing term.

20 MR HONIG: Your Honor, there is also court precedent
21 which is fairly close in a case involving EEO efforts under-
22 taken after the license term. NBMC vs. FCC, 775F, 2nd, 342,
23 1985, DC Circuit Court, held that the -- those efforts,
24 occurring as they did after the license had been challenged,
25 were of, of virtually negligible evidentiary predictive

1 weight.

2 MR. EMMONS: So that goes to weight, Your Honor, if
3 anything, not to relevance, and I submit, unless we're going
4 to brief this -- the pleadings, it would be inappropriate to
5 object to the exhibits on that basis.

6 JUDGE CHACHKIN: We're not rejecting the exhibit.
7 The question is the dates here that we're looking at. Do you
8 have any precedents supporting your position?

9 MR. EMMONS: I, I don't have the precedent with me,
10 Your Honor. I, I would be glad to submit a, a, a pleading on
11 the subject. I think that would be the proper way to handle
12 this. I haven't had the chance to check Mr. Schauble's cita-
13 tion nor Mr. Honig's citation, either.

14 JUDGE CHACHKIN: Is this same objection going to be
15 made throughout all these exhibits? Apparently the same date
16 has been shown, the license term.

17 MR. SCHAUBLE: There are a few different dates here,
18 Your Honor.

19 JUDGE CHACHKIN: Well, I see --

20 MR. SCHAUBLE: As, as for, as for activities which
21 are shown to take place within the -- what we believe to be
22 the proper term we obviously have no objection, but most of
23 the exhibits refer to the time period February 1, 1987, to
24 February 1, 1992.

25 JUDGE CHACHKIN: I believe that Mr. Honig and

1 Mr. Schauble are correct in their interpretation of what are
2 the appropriate time periods but if you want to research it,
3 I'm prepared to reserve ruling until you have an opportunity
4 to research it, and I would expect some response either this
5 afternoon or tomorrow morning when I'll make my final ruling.
6 But I think the, the evidence, the precedent, supports the
7 position of Mr. Schauble and Mr. Honig. Any other objections?

8 MR. SCHAUBLE: I have nothing further to Exhibit 1,
9 Your Honor.

10 MR HONIG: I have one additional objection to
11 Exhibit 1, Your, Your Honor. I would request that paragraph 5
12 be stricken. Testimony of a person's opinion of a station's
13 reputation in the community is not only too vague, it's not
14 responsive to the issue which goes to whether there -- the
15 station's programming, it is meritorious and, and -- in its
16 responsiveness to community needs. This paragraph doesn't add
17 anything to Your Honor's review of that issue.

18 MR. EMMONS: Your Honor, the Commission has always
19 accepted as relevant the testimony of public witnesses con-
20 cerning the reputation of a station in the community, and, and
21 for that I can give you citations, although I don't know that
22 I can give them to you off the top of my head but I think in a
23 number of cases, including the recent Fox channel of Los
24 Angeles case, the testimony by public witnesses concerning the
25 reputation of a station in a community was, was accepted and

1 | relied upon.

2 | JUDGE CHACHKIN: Bureau have any comments on this?

3 | MR HONIG: Yes, as, as the sentence reads, "Channel
4 | 45 has a reputation --" I'm sorry, were you calling on the
5 | Bureau?

6 | JUDGE CHACHKIN: I, I asked the Bureau if they had
7 | any response.

8 | MR. SHOOK: Your Honor, in the Fox case, the deci-
9 | sion issued by the review board on March 10, 1993, FCC 93R-9,
10 | one of the criteria that the review board relied upon was the
11 | licensee's reputation in the community for serving the needs,
12 | problems, and interests, and I believe that, you know, what
13 | has been argued by Glendale -- or, excuse me, not Glendale, by
14 | Trinity, rather, is the correct position.

15 | JUDGE CHACHKIN: Well, my, my difficulty, there is
16 | not specifics. There's a general statement of its reputation.
17 | There's no, as far as I see, there's no showing on what it's
18 | based on, its reputation. Where, where did -- there's nothing
19 | here as far as I know indicating Dr. Anders' knowledge of the
20 | licensee's reputation. It's just a general statement made.
21 | What am I supposed to do with that general statement?

22 | MR. EMMONS: Well, Your Honor, I, I think that, the,
23 | the case law is, is ample and instructive in that statements
24 | like this are, are relevant and admissible.

25 | JUDGE CHACHKIN: Well, reputation has to be based on

1 some knowledge of, of -- it has to have a basis. There's no
2 basis here. It's just a general statement. It says, "has a
3 reputation in the community of providing very valuable ser-
4 vices to community members."

5 MR. EMMONS: Well, he --

6 JUDGE CHACHKIN: I don't know where this, where this
7 reputation -- where he, in other words, is qualified to render
8 a statement as to the reputation of the community -- reputa-
9 tion of Channel 45 in the community. There's nothing here
10 indicating -- showing any evidence of his qualifications to
11 render such opinion.

12 MR. EMMONS: Well, I think general knowledge of, of,
13 of community --

14 JUDGE CHACHKIN: That is not even reflected here,
15 any general knowledge, as far as I can see. All that's
16 reflected here is the service that's provided by the applicant
17 to the Department of Human Resources.

18 MR. EMMONS: Well, I think, Your Honor, implicit in
19 the statement of, of the witness concerning reputation is that
20 he had knowledge of what that reputation is.

21 JUDGE CHACHKIN: I don't think there's anything
22 implicit. I mean, when a man testifies as to reputation, it
23 seems to me that he has to show where or what his basis of --
24 that he's aware of -- how, how he's come to the conclusion and
25 what he bases his conclusion as to what the reputation in the

1 community is. Just a mere general statement of his as to
2 reputation, it seems to me, is, is, is irrelevant. It has
3 no -- I don't see how there's any, any potential purpose. Go
4 ahead.

5 MR HONIG: Also, Your Honor, interspersed through
6 many of these exhibits is testimony about the non-broadcast
7 services provided by the station, and statements relating to
8 reputation which don't distinguish between the services pro-
9 vided by a particular broadcast program addressing community
10 needs and an individual's awareness that a particular constit-
11 uent group that he or she has spoken to have told him that the
12 station's reputation is high. It could be confused that -- in
13 the record as simply statements about the, the, the food
14 distribution program that don't have anything to do with this
15 case.

16 JUDGE CHACHKIN: Well, I'm not going to permit in
17 evidence general statements unless there's some foundation for
18 it as to his knowledge of the reputation in the community. He
19 can speak of his knowledge of programming rendered by Channel
20 45 and his opinion of such programming insofar as it affects
21 his involvement or the Department of Human Resources, but I
22 don't see how he could -- well, I'm not going to receive
23 paragraph 5.

24 MR. EMMONS: Well, Your Honor, can I ask, the only
25 sentence in paragraph 5 that speaks to that is the first

1 sentence. The second sentence is, is the witness's own opin-
2 ion.

3 JUDGE CHACHKIN: Well, I, I, I don't think that's
4 relevant either. I think we have to draw a conclusion based
5 on, on the evidence, namely what the facts establish as to
6 what the station has done for the community, not his opinion,
7 and I will not receive paragraph 5. Paragraph 5 is rejected.
8 Any other objections? I've indicated I've reserved a ruling
9 insofar as the appropriate time frame in considering the
10 licensees -- mark that down -- programming, and I've also
11 rejected paragraph 5. Hearing no other objections, TBF
12 Exhibit 1 is received.

13 (Whereupon, the exhibit marked for
14 identification as TBF Exhibit 1 was
15 received into evidence.)

16 MR. EMMONS: Next, Your Honor, the TBF offers into
17 evidence TBF Exhibit 2, the declaration of Timothy L. Ball.

18 JUDGE CHACHKIN: Any objections?

19 MR. SCHAUBLE: Yes, Your Honor. First of all, in
20 paragraph -- at the end of paragraph 2 on page 1, I make the
21 same objection I made previously to the February 1, 1992 time
22 frame.

23 JUDGE CHACHKIN: And I will reserve a ruling until I
24 hear further --

25 MR. SCHAUBLE: Okay.

1 JUDGE CHACHKIN: -- from TBF.

2 MR. SCHAUBLE: Also, Your Honor, on page 2, para-

3 graph 5, the third line down, I object to the --

4 JUDGE CHACHKIN: Page 2?

5 MR. SCHAUBLE: Paragraph 5 --

6 JUDGE CHACHKIN: Yes.

7 MR. SCHAUBLE: -- third line down, I object to the

8 words "and children," and this objection also goes to the

9 entirety of page 6 -- paragraph 6 on page 3 of this exhibit.

10 Your Honor, the Commission's focus under renewal expectancy is

11 on issue-responsive programming, not on whether programming

12 falls within a certain category. I believe TBF has failed to

13 show in its direct case exhibits that any of its children's

14 programming is issue-responsive programming as the Commission

15 defines that term. I believe, therefore, that this evidence

16 concerning the children's programming and this individual's

17 opinion about the children's programming is irrelevant. In

18 paragraph 6, the witness states that the program -- she --

19 that the witness believes the programs emphasize good moral

20 values and teach lessons. I believe the fact that the witness

21 believes that is irrelevant to this proceeding. I don't

22 believe the Commission gets involved in the morality or immo-

23 rality of programming, and that if such a program had a moral

24 point of view does not make it issue-responsive programming.

25 There is often entertainment programming such as movies which

1 offer a, a moral point of view, and I therefore object on the
2 basis of relevance.

3 MR. EMMONS: Your Honor, the --

4 JUDGE CHACHKIN: Well, let, let me, let me make
5 clear before we go much further in this that I assume there
6 are exhibits in this proceeding put in by TBF which sets forth
7 their programming, which they're relying on.

8 MR. SCHAUBLE: That is correct.

9 JUDGE CHACHKIN: Whether it is children's program-
10 ming, or public affairs programs, or what, what have you, I
11 assume there is such showing the --

12 MR. SCHAUBLE: That is correct, Your Honor.

13 JUDGE CHACHKIN: And as far as I'm concerned, the
14 main focus will be on the programming as reflected here. I
15 mean, general statements made here about local and children's
16 programming is meaningless unless specific programs are iden-
17 tified.

18 MR. SCHAUBLE: And, Your Honor --

19 JUDGE CHACHKIN: And the specific programs which are
20 identified are reflected in the exhibits showing the programs
21 carried by the station. So when it's -- general statements
22 are made here, just generally that "children's programs are
23 particularly responsive to the needs of the community," unless
24 there's some identification of what particular children's
25 program is responsive to the needs of the community, and the

1 manner in which such program is responsive to, to the needs of
2 the community, I'm not going to place -- put much weight on
3 general statements. It has to be based on some evidence in
4 the exhibits or some knowledge of the individual on what, what
5 specific programs he's watched, and what he's based on.
6 General statements of his belief is irrelevant as far as I'm
7 concerned.

8 MR. EMMONS: Well, I think, Your Honor, I think that
9 most, if not all, of these 30 exhibits that -- the ones that
10 do talk about children's programming, do identify particular
11 children's programs, as, for example, in, in the one we're
12 looking at, Exhibit 2, in paragraph 6, the witness identifies
13 two such programs, one called "Flying House," the other called
14 "Super Book," and I think that's generally true of, of the
15 other exhibits that address children's programming, and the
16 testimony of the station's general manager and various exhib-
17 its pertinent to that testimony do describe particular chil-
18 dren's programs, I believe, including the two that are cited
19 in this exhibit. I also want to point out, Your Honor, that
20 children's programs not only, of course, are a matter of now
21 statutory mandate, but have been received in previous license
22 renewal cases as relevant to the renewal expectancy. The most
23 recent one I'm aware of is the Fox Los Angeles case, in which
24 the initial decision had an entire section describing chil-
25 dren's programs.

1 JUDGE CHACHKIN: And, and the decision was based on
2 the children's programs as set forth in their exhibits and as
3 described by principals or employees of the station who were
4 aware of the contents of the programming.

5 MR. EMMONS: Right.

6 JUDGE CHACHKIN: My difficulty with this material,
7 and I have to say it's with other materials, is normally when
8 exhibits are put forth, affidavits from persons, from public
9 leaders in the community, normally what the exhibit consists
10 of is the fact that a particular belongs to a particular
11 organization, is the leader of a particular organization, and
12 he's commenting on the station's making available time and
13 his, and his participation on programs that he has knowledge
14 of, that he appeared on, and that what took place in those
15 programs, and also the willingness of the station to make time
16 available to his organization for spot announcements. In this
17 case there wouldn't be spot announcements. I've never seen,
18 at least in my experience, where, for instance in this case,
19 we have a police officer, who certainly -- while I'm in no way
20 saying that a policeman is not an important person, that he
21 doesn't perform an important function, nevertheless, he's not
22 the leader of a community. In, in what I'm talking about,
23 perhaps it was the police chief that might be someone who you
24 could consider a leader of the community, normally, the person
25 that you would interview when you interview community groups,